IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.96 of 2007

Date of Decision: October , 2007

Raghbir Singh .....Petitioner

Versus

Sohan Lal Chhabra .....Respondent

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.BR Mahajan, Advocate for the petitioner.

Mr.JP Sharma, Advocate with
Mr.Dinesh Thakur, Advocate for the respondent.

S. D. ANAND, J.

1. The respondent-landlord (hereinafter referred to as "the landlord") filed a plea under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "the Act") for ejectment of the petitioner-tenant (hereinafter referred to as "the tenant") on a plea of the latter (tenant) being in arrears of rent w.e.f. 1.5.1996 onwards. The Rent Controller did not provisionally assess the payable rent. It only assessed the cost and the interest payable by the tenant. On 11.2.2004, the tenant tendered rent for the period 16.8.2003 to 15.2.2004, along with the assessed cost and interest. The tender made by the tenant was accepted by the learned counsel for the landlord. There was no dispute about the rate of rent. There was, however, controversy about the period for which the tenant was in arrears of rent. The plea raised by the landlord was that the tenant

was in arrears of rent w.e.f. 1.5.1996. As against it, the plea raised by the tenant was that he had already made payment of rent upto 15.8.2003. It was in accord with that pleading that the tenant was in arrears of rent w.e.f. 16.8.2003 upto 15.2.2004. At the trial, the learned Rent Controller upheld the plea of the landlord that the tenant was in arrears of rent w.e.f. 1.5.1996. While allowing the ejectment plea, the learned Rent Controller ordered that the tenant shall have two months' time to hand over the vacant possession of the premises under reference to the landlord. It was further ordered that if the tenant makes the payment of arrears of rent for the period 1.5.1996 to 15.8.2003 (@ Rs.400/- per month, with interest @ 6% per annum) within a period of one month from the date of order, he shall not be evicted from the premises aforementioned and, in that eventuality, the petition shall stand dismissed.

2. In first appeal, the learned Appellate Authority invalidated the conditional order passed by the learned Rent Controller and, while allowing the appeal, ordered the tenant to vacate the premises under reference by or on 6.2.2007.

3. The tenant is in revision.

4. Mr.BR Mahajan, learned counsel for the tenant, argued that the learned Rent Controller ought to have provisionally assessed the arrears payable by the tenant which it did not do. In that view of things, the argument proceeded, the learned Appellate Authority ought to have remanded the matter to the learned Rent Controller with a direction to hear the parties and pass a provisional order under the proviso to Section 13(2)(i) of the Act and afford the tenant an opportunity of tendering the amount provisionally assessed by the learned Rent Controller and, then, proceed to

decide the case afresh. Reliance, in support of the advocated view, was placed upon **Rakesh Wadhawan and others Versus M/s Jagadamba Industrial Corporation and others**, AIR 2002 Supreme Court 2004.

5. The plea was resisted by the learned counsel for the landlord who argued that the conditional order, passed by the learned Rent Controller, had been very correctly set aside by the learned Appellate Authority and the reasoning adopted by the learned Appellate Authority cannot be faulted at all.

6. I find force in the plea on behalf of the tenant. It is common ground that though there was controversy between the parties with effect from the date rent was payable, the learned Rent Controller did not proceed to provisionally assess the arrears of rent payable by the tenant. It rest content with the assessment of amount of interest and costs payable by the tenant. As would be evident from a perusal of the finding recorded by the learned Rent Controller, the plea raised by the tenant with regard to his having already paid rent upto 15.8.2003 was negatived. On account of the refrain on the part of the learned Rent Controller in assessing the provisional arrears of rent payable by the tenant, the latter did not have an opportunity of deciding whether to tender the arrears of rent upto 15.8.2003 or not. In **Rakesh Wadhawan's case** (supra), the Apex Court noticed the responsibility of the learned Rent Controller to make an assessment of (i) the arrears of rent, (ii) the interest of such arrears and (iii) the cost of application. It further noticed that the proviso to Section 13(2)(i) of the Act, apart from casting an obligation to the Controller to make the aforementioned assessment, also ordained it to quantify, by way of an interim or provisional order, the amount with the tenant must pay or tender

on the first date of hearing, after the passing of such order of assessment by the Controller so as to satisfy the requirement of the proviso. The following are the relevant observations made by the Apex Court in the context of the controversy before this Court:

> "If the final adjudication by the Controller be at variance with his interim or provisional order passed under the proviso, one of the following two orders maybe made depending on the facts situation of a given case. If the amount deposited by the tenant is found to be in excess, the Controller may direct a refund. If, on the other hand, the amount deposited by the tenant is found to be short or deficient, the Controller may pass a conditional order directing tenant to place the landlord in possession of the premises by giving a reasonable time to the tenant for paying or tendering the deficit amount, failing which alone he shall be liable to be evicted. Compliance shall save him from eviction."

7. The Apex Court further noticed that the learned Rent Controller, while exercising discretion for granting the tenant an opportunity of payment of the deficit amount, could take into consideration the fact that whether the tenant had paid the rent following due month by month during the pendency of the proceedings with substantial regularity. The following are the pertinent observations made in the context by the Apex Court:

> "While exercising discretion for affording the tenant an opportunity of making good the deficit, one of the relevant factors to be taken into consideration by the Controller would

be, whether the tenant has paid or tendered with substantial regularity the rent falling due month by month during the pendency of the proceedings."

8. As per the material obtaining on the file, the following facts are evident:

a) The Rent Controller did not make an assessment of the arrears of rent, inspite of the fact that there was controversy between the parties in the context of the period for which the tenant was in arrears of rent.

b) The Rent Controller only assessed the cost of application and the interest payable on the arrears. There is no evidence that the tenant paid rent for any period of time falling during the pendency of the proceedings.

9. In that eventuality, the following observations made by the Apex Court in **Rakesh Wadhawan's case** (supra) are a clincher:

"We do not find that the Controller has, in the present passed any order under Section 13(2)(i) proviso as aforesaid and therefore the order for eviction stands vitiated on the view of the law which we have taken hereinabove. The appeal is allowed. The impugned judgment of the High Court and the orders of the Rent Controller as also of the Appellate Authority are all set aside. The case is sent back to the Controller. The Controller shall, after affording the parties an opportunity of hearing, pass a provisional order under the proviso to Section 13(2)(i) and afford the tenants an opportunity of making payment or tender and then proceed to decide the case afresh

consistently with the law as settled hereby. The costs before the Appellate Authority, the High Court and this Court shall be borne by the parties as incurred. The costs before the Controller shall abide the result."

10. In the light of the aforementioned circumstances of the case, it is obvious that the matter has to be remanded to the Rent Controller to comply with the proviso to Section 13(2)(i) of the Act. The Controller shall, after affording the parties an opportunity of hearing, pass a provisional order under the proviso to Section 13(2)(i) of the Act and afford the tenant an opportunity of making payment or tender and, then, proceed to decide the case afresh consistent with the law as settled by the Apex Court. The judgments of learned Rent Controller and also the learned Appellate Authority shall stand set aside. The matter is remanded to the learned Rent Controller for undertaking an exercise indicated above. The costs before the learned Appellate Authority and this Court shall be borne by the parties as incurred. The costs before the Controller shall abide the result.

(S. D. ANAND)
JUDGE

October , 2007
SRM

Note: Whether referred to reporter or not? Yes/No